Supreme Court, U. S.
FILED
FEB 27 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1051

CITY OF ROHNERT PARK, a municipal corporation,
Petitioner,

v.

MOON LANDRIEU, as Secretary of the United States Department of Housing and Urban Development, CITY OF SANTA ROSA, a municipal corporation, URBAN RENEWAL AGENCY of the City of Santa Rosa, a public body, corporate and politic, and ERNEST W. HAHN, INC., a California corporation,
Respondents.

Reply by Petitioner to Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

WILLIAM M. BRINTON
RICARDO J. HECHT
1400 Alcoa Building
One Maritime Plaza
San Francisco, California 94111
Attorneys for Petitioner.

COTTON, SELIGMAN & RAY
Of Counsel

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

	Page
Misstatements, Irrelevant Matter and Improper Citation to Cases Appearing in Brief in Opposition	3
Conclusion	8

TABLE OF AUTHORITIES CITED

Cases

	Pages
Arlington Heights v. Metro. Housing Corp. (1977) 429 U.S. 252, 50 L.Ed.2d 450	5
Armond Schmoll Inc. v. Federal Reserve Bank (1941) 37 N.E.2nd 225, 286 N.Y. 503, cert. den. 315 U.S. 818, 87 L.Ed. 1215	6
City of Rohnert Park v. Patricia Roberts Harris, etc., et al. (C.A. 9) 601 F.2d 1040 (1979)	2
Codding Enterprises, et al. v. Urban Renewal Agency of Santa Rosa, et al., Nos. 79465, 79762, 81799, 84237, Superior Court of Sonoma County	3 (Fn2)
Duskin v. San Francisco Redevelopment Agency (1973) 31 C.A.3d 769	6
Helena Rubenstein, Inc. v. Bau (C.A. 9) 433 F.2d 1021 (1970)	7
Hunt v. Washington Apple Advertising Commission (1977) 432 U.S. 333, 53 L.Ed.2d 383	4 (Fn3)
Jaffke v. Dunham (1957) 352 U.S. 280, 1 L.Ed.2d 314	4
Langnes v. Green (1931) 282 U.S. 531, 75 L.Ed. 520	5, 6
Paskaly v. Seale (C.A. 9) 506 F.2d 1209 (1974)	7
United States v. General Motors Corporation (C.A. D.C.) 518 F.2d 420 (1975)	7
Zenith Radio Corp. v. Hazeltine Research, Inc. (1969) 395 U.S. 100, 23 L.Ed.2d 129	4 (Fn3)

Statutes

	Pages
Administrative Procedure Act:	
5 U.S.C. 551 et seq.	4
5 U.S.C. 702	2
5 U.S.C. 706	2
Clayton Act:	
15 U.S.C. 15, Section 4	4
15 U.S.C. 15, Section 7	4
15 U.S.C. 26, Section 16	2, 4
National Environmental Policy Act (NEPA):	
42 U.S.C. 4321, et seq.	4
National Housing Act:	
42 U.S.C. 1460(c)(4)	2

Rules of Court

Rules of the Supreme Court of the United States:	
Rule 40(h)(5)	7
Federal Rules of Civil Procedure:	
Rule 56	2
Rule 56(e)	5, 7
Federal Rules of Evidence:	
Section 201	3 (Fn2)

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1051

CITY OF ROHNERT PARK, a municipal corporation,
Petitioner,

v.

MOON LANDRIEU, as Secretary of the United States Department of Housing and Urban Development, CITY OF SANTA ROSA, a municipal corporation, URBAN RENEWAL AGENCY of the City of Santa Rosa, a public body, corporate and politic, and ERNEST W. HAHN, INC., a California corporation,
Respondents.

Reply by Petitioner to Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

To the Honorable Warren E. Burger, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The Petitioner herein, CITY OF ROHNERT PARK, respectfully submits its Reply to the Brief In Opposition filed *only* by Respondents City of Santa Rosa and the Urban Renewal Agency of the City of Santa Rosa (hereinafter the Santa Rosa Respondents). Petitioner respectfully prays that this Court issue a writ of certiorari to review the Opinion and Order of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 24, 1979 (App. p. 220), and corrected by Order of October 26, 1979 (App. pp. 307-8). As noted in its Petition For Writ of Certiorari by City of Rohnert Park filed on January 4, 1980, the Opinion below was reported at 601 F.2d 1040, and the pertinent statutes appear in a separate Appendix filed by Petitioner (App. pp. 341-346). The Santa Rosa Respondents agree on at least two of the questions presented. Briefly summarized, the two questions the Santa Rosa Respondents agree on are whether Petitioner has standing to seek relief under Section 16, Clayton Act (15 U.S.C. 26) and relief under the Administrative Procedure Act (5 U.S.C. 702, 706) for a violation by Respondents of a relevant statute 42 U.S.C. 1460(c)(4). Neither question was either decided or discussed by the District Court in its Order Granting Summary Judgment (App. pp. 183-188).

In their thirty-six page Brief in Opposition, the Santa Rosa Respondents have reaffirmed Petitioner's contention that there are indeed many genuine issues as to material facts. See Rule 56, Federal Rules of Civil Procedure. They have done so by a combination of misstatements of the record, the use of irrelevant matter and citation of cases for propositions not supported by those cases. Petitioner has selectively chosen some of the more significant of these, and it will briefly discuss them below.

MISSTATEMENTS, IRRELEVANT MATTER AND IMPROPER CITATION TO CASES APPEARING IN BRIEF IN OPPOSITION[1]

Pages 2-3. The contention that a regional shopping center in Rohnert Park would violate the objectives of the regional plan of the Association of Bay Area Governments is not supported by the Appendix reference (R. App. p. 113) Moreover, this contention, *inter alia,* was unsuccessfully advanced in state court by the Santa Rosa Respondents. See Fn. 5 at page 10 of Petition For Writ of Certiorari.

Page 3. As a major owner of property in Rohnert Park, Codding Enterprises had a legitimate economic interest to protect there. Accordingly, it did advance funds to help Petitioner defray some of its costs and attorneys' fees. In no way did it "control" this case, and the Santa Rosa Respondents have not offered any facts showing in what way, if any, "control" occurred. What the Santa Rosa Respondents omitted was the finding of fact in the Sonoma County Superior Court validating proceeding mentioned on page 7 that Respondent Ernest W. Hahn, Inc. (Hahn) had advanced $650,000 to the Urban Renewal Agency, one of the two Santa Rosa Respondents. "A portion of the Agency's administrative costs * * *, including the salary of Agency Executive Director James K. Burns, were paid from the $650,000 made available by Hahn.[2] The advance of funds by Respondent Hahn and the use of part of it as found by

---

1 Page references are to the Brief In Opposition. References to the Appendices are to Respondents' (R. App. p. ....) and to Petitioner's (App. p. ....).

2 Petitioner requests this Court to take judicial notice of Finding of Fact No. 19, as quoted in part, in *Codding Enterprises et al. v. Urban Renewal Agency of Santa Rosa, et al.*, Nos. 79465, 79762, 81799 and 84237 in Sonoma County Superior Court; Section 201, Federal Rules of Evidence.

the state court is at least one way of obtaining favorable recommendations from the Executive Director.

Page 8. It is not accurate to say that each of the Respondents argued before the District Court that the Petitioner lacked standing to sue under Section 16, Clayton Act (15 U.S.C. 26). Respondent Hahn argued lack of standing under Section 4, Clayton Act (15 U.S.C. 15) which is not involved in this proceeding (App. pp. 90-93). Respondent HUD argued only on the issue of standing under the Administrative Procedure Act (APA) and the National Environmental Policy Act—NEPA (App. pp. 107-112). The latter is not involved here, and the District Court never even mentioned the APA. The Santa Rosa Respondents also argued standing under Section 7, Clayton Act (15 U.S.C. 15) which is not involved herein (App. pp. 159-160). They did mention Section 16 standing (R. App. pp. 170-172) but essentially dealt with *parens patriae,* a status petitioner has never claimed. Here, however, Petitioner has alleged "threatened loss or damage by a violation of the antitrust laws" (App. pp. 2, 7 and 8), pleading ultimate facts, not the evidence.[3]

Page 18. The Santa Rosa Respondents argue that: "A court of appeals may affirm the judgment of a district court on any ground that finds support in the record", citing *Jaffke v. Dunham* (1957) 352 U.S. 280, 281, 1 L.Ed.2d 314, 315. What this Court actually said there was that: "A successful party in the District Court may sustain its judgment on any ground that finds support in the record." This Court, in *Jaffke,* supra, held only that if the District Court was in error in striking an admissible affidavit, a cross-appeal was

3. For "representational standing" arising out of economic loss, see *Hunt v. Washington Apple Advertising Commission* (1977) 432 U.S. 333, 53 L.Ed.2d 383. However, Petitioner need not show actual loss, only the threat thereof. *Zenith Radio Corp. v. Hazeltine Research, Inc.* (1969) 395 U.S. 100, 23 L.Ed.2d 129.

not necessary for the Court of Appeals to rule on the question of its admissibility. This was a legal issue, not an impermissible finding of fact on appeal. Moreover, in the instant case, the Court of Appeals did not affirm the judgment of the District Court. It remanded for dismissal for lack of standing (App. p. 240).

Page 22. The Santa Rosa Respondents claim that the judicial relief sought "* * * will (not) lead directly to the construction of a specific facility * * *" there, citing *Arlington Heights v. Metro Housing Corp.* (1977) 429 U.S. 252, 261-62, 50 L.Ed.2d 450, 462. That case requires no such showing. Injunctive relief, if granted, does not have to guarantee that a regional shopping center would be constructed in Rohnert Park, because it, like the housing in *Arlington Heights,* supra, "* * * (is) subject to some extent to similar uncertainties. When a project is as detailed and specific as Lincoln Green, a court is not required to engage in undue speculation as a predicate for finding the plaintiff has the requisite personal stake in the controversy."

The regional shopping center in Rohnert Park, a specific project, provides that "essential dimension of specificity" that informs judicial decision making. Petitioner has alleged in its Complaint "* * * a demand for approximately 627,000 square feet of retail floor space requiring the use of some forty-five (45) acres of land. There are developers who are ready, willing and able to fulfill this demand * * *." (App. p. 5) No admissible evidence has been offered by Respondents to "pierce" these allegations. See Rule 56(e), Federal Rules of Civil Procedure.

Page 30. The Santa Rosa Respondents have cited *Langnes v. Green* (1931) 282 U.S. 531, 535-539, 75 L.Ed. 520, 523-525 for the proposition that: "In reviewing the decision of a court of appeals, all grounds for affirming the

decision may be considered, including contentions not passed upon or even rejected by the lower court." What the Santa Rosa Respondents omitted to say was that *Langnes,* supra, was before this Court on writ of certiorari to the Ninth Circuit in an admiralty case. On appeal in admiralty, there is a trial de novo on appeal. No such rule applies in this proceeding.

Page 30. In the heading on page 30 (III), the Santa Rosa Respondents argue that the decision of the Court of Appeals can be sustained, *inter alia,* on the grounds set forth in its *first* opinion (App. pp. 192-201). What these Respondents omitted to say was that the *first* opinion "* * * has been withdrawn." (App. p. 224) A fair reading of the *second* opinion (App. pp. 220-240) leads irresistibly to the conclusion that the ground of decision (collateral estoppel by judgment of a state court) which the Santa Rosa Respondents argue once again, was abandoned by the Court of Appeals in its *second* opinion. Petitioner respectfully submits that the Court of Appeals did so for the reasons set forth in its Petition For Rehearing (App. pp. 206, 207-213). See *Armond Schmoll, Inc. v. Federal Reserve Bank* (1941) 37 N.E.2d 225, 286 N.Y. 503, cert. den. 315 U.S. 818, 87 L.Ed. 1215, cited by Petitioner therein (App. p. 212).

Page 34. The claim by the Santa Rosa Respondents that "* * * the Agency approval of the Hahn contract is clearly mandated local government action * * *" demonstrates a genuine issue as to a material fact. An unlawful act—sale of urban renewal land at less than "fair value"—cannot be "clearly mandated local government action." See *Duskin v. San Francisco Redevelopment Agency* (1973) 31 C.A.3d 769.

Page 36. The Santa Rosa Respondents argue that Respondent Hahn "* * * faces a competitive disadvantage

against suburban developers of $6 million (R. App. p. 14), stating that Petitioner has offered no rejoinder. None is necessary, since no one has suggested that Respondent Hahn build a regional shopping center in Rohnert Park. It chose to build in Santa Rosa, because it could acquire approximately 30 acres of land there for $2,000,000. The "fair value" of 20 acres, the federally financed portion of the total, raises a genuine issue as to a material fact, since Respondents presented *no admissible* evidence on this issue. See Rule 56(e), Federal Rules of Civil Procedure. The Santa Rosa Respondents have offered no rejoinder to this contention anywhere in the record.

For all the foregoing reasons, Petitioner respectfully submits that Heading III and the argument therein should be disregarded as irrelevant and immaterial. Rule 40(h)(5), Rules of Supreme Court of the United States.

Finally, Petitioner respectfully submits that it has been denied due process of law for all the reasons set forth at pages 13 to 19 of its Petition For Writ of Certiorari. The three cases cited by the Santa Rosa Respondents at page 19—*Helena Rubenstein, Inc. v. Bau* (C.A. 9) 433 F.2d 1021 (1970); *United States v. General Motors Corporation* (C.A. D.C.) 518 F.2d 420 (1975); and *Paskaly v. Seale* (C.A. 9) 506 F.2d 1209 (1974)—are not to the contrary. All three involved the affirmance of summary judgment, not an order remanding for dismissal for lack of standing, an issue not even mentioned by the District Court.

CONCLUSION

For all the reasons set forth in its Petition and its Reply to Brief In Opposition, Petitioner respectfully submits that the Petition For Writ of Certiorari should be granted.

Dated: San Francisco, California

February 27, 1980

WILLIAM M. BRINTON
RICARDO J. HECHT

By WILLIAM M. BRINTON
Attorneys for Petitioner

COTTON, SELIGMAN & RAY
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February 1980, in accordance with Rule 33, Rules of the Supreme Court of the United States, three copies of the Reply By Petitioner to Brief in Opposition to Petition for a Writ of Certiorari were mailed postage prepaid to the counsel of record of Respondents as stated below:

Solicitor General
Department of Justice
Washington, D.C. 20530

John J. Powers III, Esq.
Appellate Section
Antitrust Division
Department of Justice
Washington, D.C. 20530

Joseph E. Coomes, Jr., Esq.
Richard E. Brandt, Esq.
McDonough, Holland & Allen
A Professional Corporation
555 Capitol Mall, Suite 950
Sacramento, California 95814

G. Williams Hunter, Esq.
Paul E. Locke, Esq.
450 Golden Gate Avenue
Post Office Box 36055
San Francisco, Calif. 94102

William N. Willens, Esq.
Barrett, Stearns, Collins,
Gleason & Kinney
1150 Union Bank Tower
Del Amo Financial Center
Torrance, California 90503

I further certify that all parties required to be served have been served.

WILLIAM M. BRINTON
Attorney for Petitioner

1400 Alcoa Building
One Maritime Plaza
San Francisco, California 94111